

October 30, 2018

Via US Mail, Certified

James Sachser      [jmsachser@sbccglobal.net](mailto:jmsachser@sbccglobal.net)  
Valley Springs Recycling  
148 Main Street  
Valley Springs, CA 95252

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Valley Recycling, Inc. dba Valley Springs Recycling:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Valley Springs Recycling ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Valley Springs Recycling facility located at 148 Main Street in Valley Springs, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

2151 Salvio Street #A2-319      Concord, CA 94520  
Telephone: 925-732-0960      Email: [edenenvcitizens@gmail.com](mailto:edenenvcitizens@gmail.com)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

Valley Springs Recycling  
60-Day Notice of Intent to Sue  
October 30, 2018  
Page 3 of 11

("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

**B. The Affected Receiving Waters**

The Facility discharges into a Cosgrove Creek, which then discharges to the Calaveras River Watershed, and then to the San Joaquin River ("Receiving Waters").

The San Joaquin River is a water of the United States. The CWA requires that water bodies such as the Sacramento River meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

The San Joaquin River is impaired for Selenium, Salinity, Total Dissolved Solids (TDS), Electrical Conductivity (EC), Boron, Organophosphorus (OP) Pesticides (Diazinon, Chlorpyrifos), Oxygen-Demanding Substances (BOD/Algae, Ammonia, Organic N) Organochlorine "Legacy" Pesticides (DDT, Chlordane, Dieldrin, Toxaphene, etc.) Mercury, Pathogen-Indicator Organisms, E. coli, Fecal Coliforms, and Toxicity of Unknown Cause.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

**I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around September 16, 2013, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around July 29, 2015, the Discharger submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5S051024471.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

**II. THE LOCATION OF THE ALLEGED VIOLATIONS**

**A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Valley Springs Recycling's permanent facility address of 148 Main Street in Valley Springs, California.

Valley Springs Recycling is a refuse and recycling collection, processing and disposal facility. Facility operations are covered under Standard Industrial Classification Codes (SIC) 5093 (Scrap and Waste Materials).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector N – Scrap Recycling and Waste Recycling Facilities, polluted discharges from operations at the Facility contain PCBs; heavy metals, such as zinc, copper, chromium, iron and aluminum; toxic metals, such as mercury, lead, arsenic and cadmium; total suspended solids ("TSS"); benzene, hydraulic fluids, battery acid, gasoline and diesel fuel, fuel additives, oil lubricants, brake and transmission fluids, chlorinated solvents, gasoline and diesel fuels, ethylene glycol, coolants; and oil and grease.

Valley Springs Recycling  
60-Day Notice of Intent to Sue  
October 30, 2018  
Page 4 of 11

**III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

**A. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

**2. Failure to Collect and Analyze Storm Water Samples**

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI C 6 b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system.

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 11/2/15, 11/8/15, 11/15/15, 12/3/15, 12/10/15, 12/13/15 and 12/19/15 and 12/21/15;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/4/16, 1/10/16, 1/13/16, 1/16/16, 1/22/16, 1/30/16, 2/18/16, 3/4/16, 3/11/16, 4/9/16, 4/22/16, 4/28/16 and 5/21/16;
- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 10/14/16, 10/16/16, 10/25/16, 10/30/16, 11/1/16, 11/19/16, 11/23/16, 11/26/16, 12/8/16, 12/10/16, 12/15/16 and 12/23/16;
- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/2/17, 1/7/17, 1/10/17, 1/18/17, 2/2/17, 2/6/17, 2/17/17, 2/20/17, 3/5/17, 3/21/17, 3/24/17, 4/7/17, 4/13/17, 4/16/17 and 4/22/17;
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. Qualified Storm Events occurred in the vicinity of the facility on the following relevant dates: 10/19/17, 11/8/17, 11/15/17, and 11/27/17; and
- f. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/3/18, 1/8/18, 1/22/18, 1/24/18, 2/26/18, 3/1/18, 3/8/18, 3/13/18, 3/20/18, 4/6/18, 4/16/18 and 5/25/18.

#### **B. Failure to File Timely Annual Reports**

The Discharger has failed to comply with Section XVI A of the General Permit, which provides as follows: "The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS."

Valley Springs Recycling's Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Facility failed to file the Annual Report until October 14, 2016.

The Facility's Annual Report for the reporting year 2016-17 was due on or before July 15, 2017, but it was not filed until September 23, 2017.

Finally, the Facility's Annual Report for the reporting year 2017-18 was due on or before July 16, 2018. The Facility has failed to date to file its Annual Report for the reporting year 2017-18.

#### **C. Deficient BMP Implementation**

Sections I.C, V.A and X.C 1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

#### **D. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants (including aluminum, iron, zinc and lead) from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

#### **E. Failure to Comply with Facility SWPPP**

Section 4.1 of the Facility SWPPP (Sampling) indicates that the facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility has missed all required QSE samples in the reporting years 2015-16, 2016-17 and 2017-18.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Valley Recycling, Inc, James Sacher, and employees of the Discharger responsible for compliance with the CWA.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
2151 Salvio Street #A2-319  
Concord, CA 94520  
Telephone: (925) 732-0960  
Email: [edenenvcitizens@gmail.com](mailto:edenenvcitizens@gmail.com) (email correspondence is preferred)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

EDEN has retained counsel in this matter as follows:

CRAIG A. BRANDT  
Attorney at Law  
5354 James Avenue  
Oakland CA, 94618  
Telephone: (510) 601-1309  
Email: [craigabrandt@att.net](mailto:craigabrandt@att.net)

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Craig A. Brandt.

#### **VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

#### VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ  
Eden Environmental Citizen's Group



Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Roseville, CA 95812-0100

Regional Administrator  
U.S. EPA - Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105